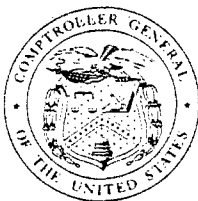


PLM-11

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

*personal
name*

10,299

FILE: B-193890

DATE: May 25, 1979

MATTER OF: Joseph J. Ritko

DIGEST A civilian employee of the Department of the Army was assigned the duties of Chief, Communications-Electronics, Fort Monroe, Virginia, which at the time was a higher grade military position. Since the position was not an established classified civilian personnel position, the claimant is not entitled to a retroactive temporary promotion with backpay] under Turner-Caldwell, 55 Comp. Gen. 539 (1975), affirmed 56 Comp. Gen. 427 (1977). Employees temporarily assigned to higher grade military position may not be granted retroactive temporary promotions to the equivalent civilian grade. B-193555, January 26, 1979; and B-183086, July 12, 1977.

[CLAIM for →

By letter of November 7, 1978, Mr. Joseph J. Ritko, a retired civilian employee of the Department of the Army, *AG-CDXX20* appeals a decision of our Claims Division disallowing his claim for a retroactive temporary promotion with accompanying backpay. Since Mr. Ritko was temporarily assigned to a military position which at the time was not a classified civilian position the decision of our Claims Division is sustained.

The record indicates that effective January 1, 1975, Mr. Ritko was assigned, by written orders, the duties of Chief, Communications-Electronics, TRADOC Division. However, he had, in fact, been serving in this position since November 1, 1974. This assignment lasted until August 8, 1976, when he was given a temporary promotion to this same position. Subsequently, the promotion was made permanent.

The sole basis for Mr. Ritko's claim is his assignment for the period January 1, 1975, until August 8, 1976, to act in the established military position of Chief, Communications-Electronics, TRADOC Division. During the time Mr. Ritko was temporarily assigned the position of Chief, Communications-Electronics, was an established military position, classified to the grade of Lieutenant Colonel (O-5). This was a higher

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grade than that of Mr. Ritko's corresponding civilian grade. The position of Chief, Communications-Electronics, did not become a classified civilian position until June 4, 1976.

In Matter of Everett Turner and David L. Caldwell, 55 Comp. Gen. 539 (1975), affirmed 56 Comp. Gen. 427 (1977), we held that employees detailed to higher grade positions for more than 120 days, without Civil Service Commission approval, are entitled to retroactive temporary promotions with backpay for the period beginning with the 121st day of the detail until the detail is terminated.

The Civil Service Commission (CSC) (now Office of Personnel Management) has promulgated implementing guidance concerning Turner-Caldwell in CSC Bulletin No. 300-40, dated May 25, 1977, subject: GAO Decision Awarding Backpay for Retroactive Temporary Promotions of Employees on Overlong Details to Higher Graded Jobs (B-183086). Paragraph 4 of that Bulletin states: "For purposes of this decision, the position must be an established one, classified under an occupational standard to a grade or pay level." (Emphasis in original). This statement emphasizes that the crucial aspect in the Turner-Caldwell line of cases is that the position or duties to which an employee is detailed be those of an established classified position. See: Matter of Ross and Squire, 57 Comp. Gen. 536 (1978); and Matter of Patrick J. Fleming, B-191413, May 22, 1978.

In the present situation, corrective action under our Turner-Caldwell line of decisions and the implementing regulations cannot be taken since the position to which Mr. Ritko was temporarily assigned was not an established classified position. The fact that the position of Chief, Communications-Electronics, was a military position precludes recovery. This is so since employees temporarily assigned to perform the duties of a higher grade military position may not be granted retroactive temporary promotions to the equivalent civilian grade. See: Matter of Donald P. Konrady, B-193555, January 26, 1979; and Matter of Defense Communication Agency-Remedy for Civilian Employees Detailed to Military Positions, B-183086, July 12, 1977.

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Instead of seeking a retroactive temporary promotion a proper course of action would have been for Mr. Ritko to have made a position classification appeal to his agency and to the CSC if necessary under the procedures outlined in 5 C.F.R. Part 511 Subpart F (1977). That remedy, may not be applied retroactively other than as provided in section 511.703.

Since there is no authority under which Mr. Ritko may be granted a retroactive temporary promotion with backpay, the disallowance of his claim is sustained.

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R. R. K. 114
Deputy Comptroller General
of the United States